

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PAUL J. MURPHY, Regional Director of the)	
Third Region of the National Labor Relations)	
Board, for and on behalf of the NATIONAL)	
LABOR RELATIONS BOARD,)	
Petitioner-Appellee,)	
)	
v.)	No. 17-0837
)	
CAYUGA MEDICAL CENTER OF ITHACA,)	
Respondent-Appellant.)	
)	

**OBJECTION OF THE NATIONAL LABOR
RELATIONS BOARD TO BILL OF COSTS
FILED BY CAYUGA MEDICAL CENTER**

Pursuant to Rule 39(d)(2) of the Federal Rules of Appellate Procedure, the National Labor Relations Board ("the Board"), hereby opposes the Bill of Costs filed by Cayuga Medical Center ("the Company") in the above-captioned case. In support of its opposition, the Board shows as follows:

1. On March 23, 2018, this Court issued a Summary Order in the above-captioned case, vacating the district court's injunction under § 10(j) of the National Labor Relations Act, 29 U.S.C. § 160(j), and remanding to district court for balancing of the equities under this Court's § 10(j) "just and proper" standard.

2. On April 6, 2018, the Company filed a bill of costs with this Court, requesting that costs be taxed against the Board in the amount of \$3,059.55.

3. Although Rule 39(a) of the Federal Rules of Appellate Procedure awards a party prevailing on appeal certain costs of the appeal, that party must comply with all applicable rules when seeking such costs. The Company's request fails to comply with such rules, for the reasons discussed below.

4. The Company seeks \$1,882.05 for reimbursement of the cost of printing the appendix. The Board contests that amount as both excessive and improper, as detailed below.

a. The Company requests reimbursement for 9 copies of the appendix, rather than the 6 paper copies required to be filed with the Court under Local Rule 30.1(b). Thus, the Company's requests exceed the "necessary copies" that may be recovered under Fed. R. App. P. 39 and Local Rule 39.1.

b. In addition, the Company seeks a per-page rate of reimbursement for reproduction of the appendix that exceeds the rate allowed under Local Rule 39.1. This Court's Local Rule 39.1 provides that "[t]he cost of reproducing necessary copies of briefs, appendices, or record excerpts is taxable at the lesser of the actual cost or the maximum rate set by the court

and posted on the court's website.” This Court’s posted maximum rate is \$.20 per page. The Company’s requested amount of \$1,282.05 for 9 copies of the 407 pages in the appendix (Bill of Costs Attachment, p. 1) equates to an excessive cost of \$.35 per page. *See Furman v. Cirrito*, 782 F.2d 353, 356 (2d Cir. 1986) (reproductions costs of appendix limited by local rules to \$0.20 per page). The Company’s recoverable cost for reproducing the 6 necessary copies of the 407-page appendix at \$.20 per page is \$488.40.

c. The requested \$1,882.05 includes \$375.00 for preparation of the Table of Contents. (Bill of Costs Attachment, p. 1.) Inclusion of the cost for preparing the Table of Contents is improper. Local Rule 39.1 allows for the recovery of “reproduction costs,” which involves the cost of “reproducing necessary copies” of the appendices. Such costs do not encompass the printing service provider’s fee for preparation of tables. The \$375 fee should be disallowed.

5. The Board also contests the \$417.50 and the \$255 that the Company seeks to recover for the cost of printing its opening brief and reply brief, respectively, as excessive for the following reasons:

a. As with the appendix, the Company requests reimbursement for 9 copies of the opening and reply briefs, rather than the 6 “necessary copies” under Local Rule 31.1.

b. In addition, as with the appendix, the Company is seeking reimbursement for a per-page cost that exceeds the allowable amount. As discussed above, Local Rule 39.1 limits the cost of reproducing necessary copies of briefs to the lesser of the actual cost or \$0.20 per page. The Company's requested \$142.50 for 9 copies of the 50-page opening brief and special appendix (Bill of Costs Attachment, p. 1) equates to a rate of \$.317 per page that exceeds the \$0.20 per page limit set forth in Local Rule 39.1. Similarly, the Company's requested \$55.00 for 9 copies of the 18-page reply brief (Bill of Costs Attachment, p. 2) equates to an excessive rate of \$.34 per page. The Company's recoverable cost for reproduction of the 6 necessary copies of the 50-page opening brief at \$.20 per page is \$60. The Company's recoverable cost for the 6 necessary copies of the 18-page reply brief at \$.20 per page is \$21.60.

c. As with the appendix, the Company's requested costs for the opening brief include fees for the preparation of the table of contents (\$75.00) (Bill of Costs Attachment, p. 1), which, as discussed above, is not recoverable under Local Rule 39.1 and should be disallowed.

d. The Company seeks reimbursement for a binding fee that exceeds this Court's posted maximum rate of \$5.00 per copy. The Company seeks reimbursement of \$75.00 for binding 9 copies of the opening brief (Bill of

Costs Attachment, p. 1) and \$75.00 for binding 9 copies of the reply brief (Bill of Costs Attachment, p. 2), an excessive rate of \$8.333 per copy. The Company's recoverable cost for binding is \$30.00 for 6 copies of the opening brief and \$30.00 for 6 copies of the reply brief.

Therefore, the Board requests that the Court reduce the amount of costs that the Company seeks for reproducing the appendix and its opening and reply briefs, as discussed above, such that the amount recovered complies with Local Rule 39.1. *See Bancamerica Comm. Corp. v. Mosher Steel of Kansas, Inc.*, 103 F.3d 80, 82 n.2 (10th Cir. 1996) (prevailing party cannot seek to recover more than the taxable cost as set forth in the court's local rules, regardless of reproductive process that the party used).

Respectfully submitted,

/s/ Laura T. Vazquez
Deputy Assistant General Counsel
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570
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Dated at Washington, D.C.
this 18th day of April 2018

CERTIFICATE OF SERVICE

I hereby certify that on April 18, 2018, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the CM/ECF system. All participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

/s/ Laura T. Vazquez

Dated at Washington, D.C.
this 18th day of April 2018